

HOUSE BILL REPORT

ESB 5519

As Reported by House Committee On:
Human Services

Title: An act relating to reform of competency evaluation and competency restoration procedures.

Brief Description: Reforming competency evaluation and restoration procedures.

Sponsors: Senators Hargrove, Stevens and Regala.

Brief History:

Committee Activity:

Human Services: 3/23/09, 3/26/09 [DPA].

**Brief Summary of Engrossed Bill
(As Amended by House)**

- Creates new sections to be added to Title 10 regarding how competency evaluations are conducted and the substance of competency evaluation reports; the scope of the statutory provision regarding evaluations is narrowed to include only those cases where the competency of the defendant is at issue; these new sections only apply to counties with populations greater than 1.5 million persons, and they expire on June 30, 2011.
- Creates a separate statutory provision regarding cases where a defendant has pleaded not guilty by reason of insanity or asserted a defense of diminished capacity.
- Requires that only one expert or professional person evaluate the competency of the defendant, rather than two, and that the competency evaluation be performed by or in the consultation with a developmental disabilities professional if it appears that the characteristics of developmental disability may be a significant factor in the defendant's ability to participate in the criminal proceeding; applies only to counties with populations greater than 1.5 million persons, and the applicable section expires on June 30, 2011.
- Requires the court to order that a competency evaluation shall take place in the jail or detention facility where the defendant is being held and permits a defendant to be evaluated at a state hospital facility only upon determination of the evaluator, except in limited circumstances; applies only to counties

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with populations greater than 1.5 million persons, and the applicable section expires on June 30, 2011.

- Requires that the competency evaluation report of a defendant held in jail shall be completed within 21 days from the time that the Department of Social and Health Services (DSHS) receives the court's order and other relevant documents; applies only to counties with populations greater than 1.5 million persons, and the applicable section expires on June 30, 2011.
- Removes the requirement that a professional evaluating a defendant for competency provide an opinion as to whether the defendant is a substantial danger to other persons or presents a substantial likelihood of committing criminal acts jeopardizing public safety or security.
- Prohibits the court from ordering a second 90-day period of competency restoration for a felony offense if such period of time would exceed the top of the standard sentence range for which the defendant is charged unless further competency restoration treatment is in the public interest.
- Prohibits the court from ordering a third period of competency restoration for a felony — for up to six months — if the allegations charged against the defendant do not include one or more charges which are considered "serious offenses."
- Permits the court after a finding of incompetence to detain, for 48 hours, a defendant who is in custody and refuses to cooperate with the evaluation in order to permit an evaluation by a designated mental health professional if a defendant is charged with a nonfelony which is not serious.
- Requires the jail or detention center, upon receipt of an order requiring the transfer of a defendant to a state hospital or other medical facility, to provide all medical information in its possession to the DSHS within three days.
- Permits the court to conduct a show cause hearing if the DSHS fails to conduct or complete a competency evaluation within the time limits set forth in statute; if no good cause exists for failure to meet statutory deadlines, the court may order the DSHS to reimburse the jail for any excess days at a rate of \$90 per day.
- Requires the DSHS to report annually to the Legislature, beginning October 1, 2010, regarding the waiting period for competency evaluations and competency restoration treatment during the previous state fiscal year.
- Makes technical corrections to statutory references.

HOUSE COMMITTEE ON HUMAN SERVICES

Majority Report: Do pass as amended. Signed by 5 members: Representatives Dickerson, Chair; Orwall, Vice Chair; Green, Morrell and O'Brien.

Minority Report: Do not pass. Signed by 3 members: Representatives Dammeier, Ranking Minority Member; Klippert and Walsh.

Staff: Linda Merelle (786-7092)

Background:

Competency Evaluations.

A criminal defendant is incompetent to stand trial when, due to a mental disorder, the defendant lacks the capacity to understand the nature of the criminal proceedings or lacks the ability to rationally assist in his or her defense. A competency evaluation is required whenever it appears that a criminal defendant may be incompetent to stand trial. If the evaluator finds that the defendant is incompetent, and the case is a felony or a serious misdemeanor, the court must order the defendant to undergo competency restoration treatment. State law does not specify a time limit for completion of a competency evaluation. There are three stages during which a competency evaluation may be delayed:

- *Initial Custody:* the time from which a defendant is taken into custody until the court orders a competency evaluation of the defendant.
- *After Court Orders Competency Evaluation:* the time period after the court issues an order for evaluation until the DSHS receives a copy of the court order and the pertinent case documents.
- *After Case Documents Provided to the DSHS:* the time period it takes to conduct the competency evaluation and complete an evaluation report.

The court may order the competency evaluation to take place at the state hospital or at the jail (or detention center) or in the community. When an evaluation takes place at the jail or in the community, it is considered to be on an "outpatient" basis. Evaluations at a state hospital facility are on an "inpatient" basis. The statutory provision regarding competency evaluation includes an evaluation of the future dangerousness of the offender, and may include an evaluation regarding whether the defendant had the capacity to have a particular state of mind which is an element of the offense charged or whether the defendant was insane at the time of the act which is charged in the offense.

Upon a finding that a defendant is incompetent, the criminal case is stayed during all competency proceedings. For felony offenses, the court may order two 90-day periods to restore the defendant's competency and may order that the defendant undergo competency restoration for a further period of up to six months. For a nonfelony offense that is a serious offense, the court shall order that the defendant be held in a secure mental health facility for no more than 14 days or that the defendant be placed on conditional release for up to 90 days, or any combination of these two options. For a nonfelony offense that is not a serious offense, the court may stay or dismiss proceedings and detain the defendant for a sufficient time to allow a designated mental health professional to evaluate the defendant for a civil commitment.

If the defendant cannot be restored to competency within the time periods prescribed by law, the criminal case must be dismissed without prejudice. If the offense charged was a felony or misdemeanor or gross misdemeanor which is a "serious offense," the defendant must be

transported to the state hospital for civil commitment proceedings. The state may file a petition for a civil commitment for a period of 90 days for a misdemeanor charge or 180 days for a felony charge which may be renewed at successive civil commitment hearings.

Summary of Amended Bill:

Evaluations and Reports (Limited Application).

The first two sections of the bill regarding competency evaluations and the reports apply only to counties with populations greater than 1.5 million persons, and these sections expire on June 30, 2011. Evaluations to determine competency and evaluations required as a result of an entry of a plea of not guilty or an affirmative defense of diminished capacity are placed in separate provisions. Only one expert or professional is required to perform an evaluation. If there is an indication that the defendant has a developmental disability, the evaluation must be performed by or in consultation with a developmental disabilities professional.

The competency evaluation of a defendant held in jail must be completed within 21 days from the time that the DSHS receives the court's order, the charging documents, the certification of probable cause, the police report, and a summary of the defendant's criminal history.

The evaluator is no longer required to provide an opinion whether the defendant is a substantial danger to other persons or presents a substantial likelihood of committing criminal acts which jeopardize the public safety or security.

Competency Restoration.

A court may not order a second 90-day period of competency restoration for a felony offense if such period of time would exceed the high end of the standard range for the offense charged. The court may not order a third period of restoration — up to six months — if the felony offense is not a "serious offense." A "serious offense" includes a violent offense, sex offense, serious traffic offense, a domestic violent offense, and others. For a defendant charged with a nonfelony offense that is not serious and who has been determined to be not competent, the court may order an evaluation by a designated mental health professional and hold the defendant in custody for up to 48 hours in order to complete the evaluation if the defendant refuses to cooperate with the evaluation.

Medical Information.

The jail or detention center must, upon receipt of an order requiring the transfer of a defendant to a state hospital or other medical facility, provide all medical information in its possession to the DSHS within three days.

Show Cause Hearings.

If the DSHS fails to conduct or complete a competency evaluation within the time limits set forth in the statute, the court may conduct a show cause hearing. If no good cause is found to exist for the failure to meet the statutory deadlines, the court may order the DSHS to reimburse the jail for any excess days beyond the statutory limits at a rate of \$90 per day.

Report to Legislature.

The DSHS must report annually to the Legislature beginning October 1, 2010, regarding the waiting period for competency evaluations and competency restoration treatment during the previous fiscal year. The report must include:

- the number of competency evaluation referrals received, grouped by state hospital;
- the average waiting period for competency evaluations, presented on a monthly basis;
- the average waiting period for competency evaluations, presented on an annual basis, and itemized by county;
- the average waiting period for inpatient competency restoration, presented on a monthly basis, grouped by state hospital;
- the number of competency restoration treatment referrals received on an annual basis, grouped by state hospital;
- the number of probable cause hearings held during the reporting period for failure to complete an evaluation within the statutory time limits, grouped by state hospital; and
- a description of a corrective action plan if the data indicates that the DSHS has failed to comply with the statutory time limits.

Applicability.

The first two sections of the bill apply only to counties with a population greater than 1.5 million persons, and they expire on June 30, 2011.

Technical Corrections.

Technical corrections to statutory references are made in chapters 10.77, 71.05, and 71.09 RCWs.

Amended Bill Compared to Original Bill:

The first two sections of the bill regarding how competency evaluations are conducted and the substance of the reports regarding competency evaluations apply only to counties with a population greater than 1.5 million persons. These sections expire on June 30, 2011. If a defendant exhibits behavior indicative of severe decompensation, and the evaluator has not, within three days of the court's order, made a decision regarding the location of the competency evaluation, any party may file a motion with the court seeking an order to have the defendant evaluated at a secure mental health facility. The defendant may be held for up to 48 hours, instead of 12 hours, for a designated mental health professional to conduct an evaluation of a defendant who has been charged with a nonfelony, nonserious offense, and whose case has been dismissed as a result of finding that the defendant is not competent.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) People with mental illness spend too much time in jail. People were staying beyond their maximum sentence just to get an evaluation. People became destabilized while they were in the jail. This bill represents a highlight in the convergence of courts, hospitals, prosecutors, and the defense community. The bill will result in efficiencies. The point of the task force was to reduce the amount of time that offenders stay in jail. The competency evaluation will happen more quickly. In Pierce County, the judges sent everyone to Western State Hospital. This bill will save local governments money and save the state money. There is a fundamental flaw in the Sheriff's testimony. It takes longer to put people in jail than to do an evaluation in the jail. There is an immunity provision. The defendant can say anything during the evaluation and be immune.

(With concerns) The task force has largely been King County-centric. The cost of diminished capacity evaluations will be borne by local courts rather than the Washington State Hospitals. This boils down to "who will pay for what" and that is a shame. It makes more sense to look at the range of seven days rather than 21 days and to look at the outliers.

(Opposed) Offenders addressed in this bill belong in a hospital rather than the jail. There is an arterial bleed and this is a band-aid. This potentially puts very mentally ill persons in a jail cell when they should be in a hospital. There is no capacity to take offenders at local hospitals. It is bad policy to have people left in jail waiting for an evaluation for 21 days. There is no fiscal savings because of costs for medications. This is not an appropriate vehicle to go forward at this time. Twelve hours is too short to conduct an evaluation for those whose cases are dismissed and there needs to be sufficient time to allow the designated mental health professional to conduct an evaluation. We have a horrible problem with mentally ill offenders in jail. This bill makes it worse. It does not allow the sheriff or prosecutor to seek an inpatient evaluation. There is a way things are done in King County where it is a much different situation because the Legislature funded two co-located evaluators. No county lives in the average. The bulk of competency evaluations take place in King County. This bill forces the evaluations to take place in the jail. The flexibility of the location of the evaluation should remain in the statute. The superior court judge should have discretion to have the evaluation take place at one of the Washington State Hospitals.

Persons Testifying: (In support) Jim Adams, National Alliance on Mental Health; Richard Kellogg, Department of Social and Health Services; Judge Ronald Kessler, King County Superior Court; and Michael Finkle, City of Seattle Attorney's Office.

(With concerns) David Lord, Disability Rights Washington; and Judge Marilyn Paja, District and Municipal Court Judge's Association.

(Opposed) John Didion, Pacific County Sheriff; Amnon Schoenfeld, King County Mental Health, Chemical Abuse and Dependency Services Division; Craig Adams, Pierce County Sheriff; Don Pierce, Washington Association of Sheriffs and Police Chiefs; Tom McBride, Washington Association of Prosecuting Attorneys; Steve Sultemeier, Pacific County Sheriff's Department; and Brian Enslow, Washington State Association of Counties.

Persons Signed In To Testify But Not Testifying: None.